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September 29, 2011

**VIA ECFS**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Re: Notice of *Ex Parte* Presentation, DISH Network, LLC  
CG Docket No. 11-50  
Petition for Declaratory Ruling Concerning The Telephone  
Consumers Protection Act (TCPA)

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, the undersigned counsel hereby provides notice that on September 27, 2011, DISH Network LLC ("DISH Network") met with Margaret McCarthy, Policy Advisor for Broadband, Wireline, and Universal Service to Commissioner Michael Copps, in the proceeding identified above. In attendance on behalf of DISH Network were Jeffrey Blum, Senior Vice President and Deputy General Counsel, Alison Minea, Corporate Counsel; Steven A. Augustino and Alysa Z. Hutnik, Kelley Drye & Warren LLP.

During the meeting, and consistent with its comments and reply comments filed in this proceeding, DISH Network encouraged the FCC to conclude that the TCPA does not hold businesses liable for unlawful telemarketing calls that are initiated or made by independent third parties. These arguments were consistent with those provided at pages 12-16 of DISH Network's May 4, 2011 Comments in this proceeding.

DISH Network further added that, alternatively, if the FCC were to conclude that the TCPA did provide for some type of third party liability, in such a situation, the federal common law of agency is the governing standard for determining how to apply such third party liability to a given set of facts. The federal common law of agency test involves a list of factors,

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but primarily focuses on whether the principal directed and controlled the manner and means of the agent's conduct at issue to thus be legally responsible for such conduct. The U.S. Supreme Court's decision in *Community for Creative Non-Violence v. Reid* ("CCNV") sets forth the factors to be considered, which are:

- the hiring party's right to control the manner and means by which the product is accomplished;
- the skill required;
- the source of the instrumentalities and tools;
- the location of the work;
- the duration of the relationship between the parties;
- whether the hiring party has the right to assign additional projects to the hired party;
- the extent of the hired party's discretion over when and how long to work;
- the method of payment;
- the hired party's role in hiring and paying assistants;
- whether the work is part of the regular business of the hiring party;
- whether the hiring party is in business;
- the provision of employee benefits; and
- the tax treatment of the hired party.

DISH Network urged the Commission to cite the CCNV factors and to clearly state that liability could attach only if the alleged principal directed and controlled the purported violative conduct. Such an outcome would provide the necessary clarity for businesses operating nationwide and would maintain the consumer protection aims of the TCPA.

Sincerely,

A handwritten signature in black ink, appearing to read "Steven A. Augustino". The signature is stylized with a large, sweeping initial "S" and a cursive "Augustino".

Steven A. Augustino

SAA:pab

cc: Margaret McCarthy